

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

668

CAF 19-00933

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND BANNISTER, JJ.

IN THE MATTER OF MARILYN K. KOWALEWSKI,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

ANDRIANA NAQUA DENICE RUSHING, RESPONDENT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (NATHANIEL V. RILEY OF
COUNSEL), FOR RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Onondaga County (Karen Stanislaus, R.), entered April 19, 2019 in a proceeding pursuant to Family Court Act article 8. The order, among other things, directed respondent to refrain from committing criminal offenses against petitioner.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition is dismissed.

Memorandum: Petitioner commenced this Family Court Act article 8 proceeding, alleging in her petition that respondent committed the family offenses of aggravated harassment in the second degree, assault in the second or third degree, and menacing in the second or third degree and seeking, among other things, an order of protection. Family Court determined that respondent committed the family offense of disorderly conduct, an offense not specified in the petition and, inter alia, issued an order of protection. Respondent appeals.

Here, the petition does not adequately plead that respondent committed disorderly conduct, and the court therefore erred in refusing to dismiss the petition (*see Matter of Rohrback v Monaco*, 173 AD3d 1774, 1774 [4th Dept 2019]; *see generally Matter of Brazie v Zenisek*, 99 AD3d 1258, 1259 [4th Dept 2012]).

In light of our determination, we decline to reach respondent's remaining contentions.

Entered: July 17, 2020

Mark W. Bennett
Clerk of the Court